

1 *E-filed on* 9/8/06

2  
3  
4  
5  
6  
7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
11

12 IN RE CYGNUS TELECOMMUNICATIONS  
13 TECHNOLOGY, LLC, PATENT  
LITIGATION

14  
15 THIS ORDER RELATES TO:  
All Actions

No. MDL-1423  
This Order Applies to All Actions


C-02-00142 RMW  
C-02-00145 RMW  
C-02-05437 RMW  
C-03-03594 RMW  
C-03-03596 RMW  
C-03-03378 RMW  
C-03-04003 RMW  
C-03-05758 RMW  
C-04-01791 RMW  
C-04-03001 RMW  
C-04-03365 RMW  
C-04-04247 RMW  
C-04-04359 RMW  
C-06-03843 RMW  
C-06-04295 RMW

16  
17  
18  
19  
20  
21  
22 ORDER DENYING CYGNUS'S MOTION TO  
EXCLUDE EVIDENCE CONSIDERED  
DURING REEXAMINATION  
23

24  
25 Plaintiff Cygnus Telecommunications Technology, LLC moves for summary judgment that  
26 references considered in the recent reexamination of the patents-in-suit may not be relied upon by  
27 the defendants here when asserting invalidity of the patents-in-suit. It is unclear from the motion the  
28 precise basis on which Cygnus seeks to exclude the evidence. Proceedings before the U.S. Patent

1 and Trademark Office are not binding on the courts.<sup>1</sup> See *Quad Envtl. Techs. Corp. v. Union*  
2 *Sanitary Dist.*, 946 F.2d 870, 875-76 (Fed. Cir. 1991). If the basis of Cygnus's motion is evidentiary  
3 rules, its timing is governed by the prior orders scheduling claim construction and related summary  
4 judgment motions, and any such motion to exclude evidence will be considered at the November 20,  
5 2006 hearing. Cygnus's motion is denied, though without prejudice to refile as to any specific  
6 evidence which defendants seek to introduce at any evidentiary hearing.

7  
8  
9 DATED: 9/8/06

  
\_\_\_\_\_  
RONALD M. WHYTE  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 <sup>1</sup> Cygnus clarified at oral argument that it was not seeking to exclude the evidence on the basis that  
the USPTO proceedings bound this court.

1 A copy of this order was mailed on \_\_\_\_\_ to:

2 **Counsel for Plaintiff:**

3 John P. Sutton  
2421 Pierce Street  
4 San Francisco, CA 94115-1131

Kieran Patrick Fallon  
436 SW 8th Street  
Miami, FL 33130-2814

5 **Counsel for Defendants:**

6 Alan M. Weisberg, Steven M. Greenberg  
Christopher & Weisberg, P.A.  
7 200 E. Las Olas Avenue  
Suite 2040  
8 Fort Lauderdale, FL 33301

Matthew Francis McGahren  
Baum & McGahren  
6171 Crooked Creek Road  
Norcross, GA 30092

9 John C. Carey  
Rodriguez Greenberg & Paul  
10 1395 Brickell Ave, Suite 700  
Miami, FL 33131

Lori D. Greendorfer, Maxim H. Waldbaum  
Schiff Hardin LLP  
623 Fifth Avenue  
28th Floor  
New York, NY 10022

11 Felice B. Galant, Gregory B. Wood  
12 Fulbright & Jaworski L.L.P.  
865 South Figueroa Street  
13 Twenty-Ninth Floor  
Los Angeles, CA 90017

Thomas T. Tamlyn  
Yeskoo Hogan & Tamlyn, LLP  
535 Fifth Avenue  
New York, NY 10017

14 Joseph P. Zammit  
15 Fulbright & Jaworski  
666 Fifth Avenue  
16 New York, NY 10103

Peter S. Canelias  
Law Offices of Peter S. Canelias  
420 Lexington Avenue  
Suite 2148  
New York, NY 10170

17 John F. Mardula, Jon L. Roberts  
18 Roberts Mardula & Wertheim, LLC  
11800 Sunrise Valley Drive  
Suite 1000  
19 Reston, VA 20191-5302

David T. Alexander  
MBV Law LLP  
855 Front Street  
San Francisco, CA 94111

20 Richard B. Sheldon  
21 Mitchell Silberberg & Knupp LLP  
11377 West Olympic Boulevard  
Los Angeles, CA 90064-1683

Jon M. Gibbs  
Akerman, Senterfitt  
255 S. Orange Avenue  
Suite 1700  
Post Office Box 0231  
Orlando, FL 32802-0231

22 Jeffrey L. Silvestrini, Brian F. Roberts  
23 Cohne Rappaport & Segal  
P.O. Box 11008  
24 Salt Lake City, UT 84147-0008

Elizabeth E. Green, R. Scott Shuker  
Gronek & Latham, LLP  
390 N. Orange Avenue  
Suite 600  
Orlando, FL 32801

25 Raymond J. Etcheverry  
26 Parsons, Behle & Latimer  
One Utah Center  
201 South Main Street,  
27 Suite 1800, Post Office Box 45898  
Salt Lake City, UT 84145

Meredith L. Caliman  
Meredith L. Caliman Law Offices  
3858 Carson Street, Suite 120  
Torrance, CA 90503-6705

Gregory J. Nelson  
Nelson & Roediger  
3333 E Camelback Road, Suite 212  
Phoenix, AZ 85018

1 Peter Neil Greenfeld  
Greenfeld Law Group  
2 3333 E Camelback Road, Suite 212  
Phoenix, AZ 85018-2324

3 Matthew McGahren  
4 Baum, McGahren & Chiu, LLC  
6171 Crooked Creek Road  
5 Norcross, GA 30092

**Courtesy Copy:**

Clerk of the Panel  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Room G-255, North Lobby  
Washington, DC 20002-8004

6  
7 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list  
8 receive a copy of this order, if necessary, and shall inform the court of any omissions.  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28